

NATURAL RESOURCES CODE
SUBTITLE B. CONSERVATION AND REGULATION OF OIL AND GAS
CHAPTER 85. CONSERVATION OF OIL AND GAS
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 85.001. DEFINITIONS. (a) In this chapter:

(1) "Commission" means the Railroad Commission of Texas.

(2) "Pool," "common pool," "field," or "common source of supply" means a common reservoir.

(3) "Pool" means an underground reservoir containing a connected accumulation of crude petroleum oil, or natural gas, or both.

(4) "Product" and "product of oil or gas" mean a commodity or thing made or manufactured from oil or gas and derivatives or by-products of oil or gas, including refined crude oil, crude tops, topped crude, processed crude petroleum, residue from crude petroleum, cracking stock, uncracked fuel oil, treated crude oil, fuel oil, residuum, gas oil, naphtha, distillate, gasoline, kerosene, benzine, wash oil, waste oil, lubricating oil, casinghead gas, casinghead gasoline, blended gasoline, and blends or mixtures of oil, or gas, or any derivatives or by-products of them.

(b) "Oil" means crude petroleum oil, crude petroleum, and crude oil, and "gas" means natural gas. These terms shall not be construed as referring to substances different from those referred to in this chapter and other laws as "oil and gas" and these terms mean the same whether used in this chapter or in other laws relating to the conservation of oil and gas.

Acts 1977, 65th Leg., p. 2514, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.002. ANTITRUST AND MONOPOLY STATUTES. (a) The provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, and Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, do not affect, alter, diminish, change, or modify the antitrust and monopoly laws of this state and do not directly or indirectly authorize a violation of the antitrust and monopoly laws of this state.

(b) It is the legislative intent that no provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, shall affect, alter, diminish, or amend in any manner a provision of the antitrust and monopoly laws of this state or authorize a violation of the antitrust and monopoly laws. The legislative intent expressed in this subsection shall prevail and take precedence over sections cited in this subsection regardless of any statement in these sections to the contrary.

(c) If any provision of this chapter that was formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, is construed by a court of this state in a manner that will affect, alter, diminish, or modify any provision of the antitrust and monopoly laws of this state, this provision which is in conflict is declared null and void rather than the antitrust and monopoly laws. Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

Sec. 85.011. SUPERVISORS, DEPUTY SUPERVISORS, AND UMPIRES. The commission shall employ all supervisors, deputy supervisors, and umpires necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.012. ASSISTANTS AND CLERICAL HELP. The commission shall employ other assistants and clerical help necessary to carry out the provisions of this chapter and other related laws and rules and orders of the commission.

Acts 1977, 65th Leg., p. 2515, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.013. PERSONS ENFORCING RULES AND ORDERS. A person entrusted with the enforcement of the rules and orders of the commission shall be a regular employee of the state and paid by the state. No person other than a regular employee of the state may be charged with or relied on for the performance of these duties. Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER C. PROVISIONS GENERALLY APPLICABLE TO THE CONSERVATION
OF OIL AND GAS

Sec. 85.041. ACTS PROHIBITED IN VIOLATION OF LAWS, RULES, AND ORDERS. (a) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of oil or gas, produced in whole or in part in violation of any oil or gas conservation statute of this state or of any rule or order of the commission under such a statute, is prohibited.

(b) The purchase, acquisition, or sale, or the transporting, refining, processing, or handling in any other way, of any product of oil or gas which is derived in whole or in part from oil or gas or any product of either, which was in whole or part produced, purchased, acquired, sold, transported, refined, processed, or handled in any other way, in violation of any oil or gas conservation statute of this state, or of any rule or order of the commission under such a statute, is prohibited.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.042. RULES AND ORDERS. (a) The commission may promulgate and enforce rules and orders necessary to carry into effect the provisions of Section 85.041 of this code and to prevent that section's violation.

(b) When necessary, the commission shall make and enforce rules either general in their nature or applicable to particular fields for the prevention of actual waste of oil or operations in the field dangerous to life or property.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.043. APPLICATION OF CERTAIN RULES AND ORDERS. If the commission requires a showing that refined products were manufactured from oil legally produced, the requirement shall be of uniform application throughout the state; provided that, if the rule or order is promulgated for the purpose of controlling a condition in any local area or preventing a violation in any local area, then on the complaint of a person that the same or similar conditions exist in some other local area and the promulgation and enforcement of the rule could be beneficially applied to that additional area, the commission may determine whether or not those conditions do exist, and if it is shown that they do, the rule or order may be enlarged to include the additional area.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2005, 79th Leg., ch. 346, Sec. 1, eff. June 17, 2005.

Sec. 85.044. EXEMPT PURCHASES. The provisions of Sections 85.041 through 85.043 of this code do not apply to the purchase of products of oil if made by the ultimate consumer from a retail distributor of the products.

Acts 1977, 65th Leg., p. 2516, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.045. WASTE ILLEGAL AND PROHIBITED. The production, storage, or transportation of oil or gas in a manner, in an amount, or under conditions that constitute waste is unlawful and is prohibited.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.046. WASTE. (a) The term "waste," among other things, specifically includes:

(1) operation of any oil well or wells with an inefficient gas-oil ratio and the commission may determine and prescribe by order the permitted gas-oil ratio for the operation of oil wells;

(2) drowning with water a stratum or part of a stratum that is capable of producing oil or gas or both in paying quantities;

(3) underground waste or loss, however caused and whether or not the cause of the underground waste or loss is defined in this section;

(4) permitting any natural gas well to burn

wastefully;

(5) creation of unnecessary fire hazards;

(6) physical waste or loss incident to or resulting from drilling, equipping, locating, spacing, or operating a well or wells in a manner that reduces or tends to reduce the total ultimate recovery of oil or gas from any pool;

(7) waste or loss incident to or resulting from the unnecessary, inefficient, excessive, or improper use of the reservoir energy, including the gas energy or water drive, in any well or pool; however, it is not the intent of this section or the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, to require repressuring of an oil pool or to require that the separately owned properties in any pool be unitized under one management, control, or ownership;

(8) surface waste or surface loss, including the temporary or permanent storage of oil or the placing of any product of oil in open pits or earthen storage, and other forms of surface waste or surface loss including unnecessary or excessive surface losses, or destruction without beneficial use, either of oil or gas;

(9) escape of gas into the open air in excess of the amount necessary in the efficient drilling or operation of the well from a well producing both oil and gas;

(10) production of oil in excess of transportation or market facilities or reasonable market demand, and the commission may determine when excess production exists or is imminent and ascertain the reasonable market demand; and

(11) surface or subsurface waste of hydrocarbons, including the physical or economic waste or loss of hydrocarbons in the creation, operation, maintenance, or abandonment of an underground hydrocarbon storage facility.

(b) Notwithstanding the provisions contained in this section or elsewhere in this code or in other statutes or laws, the commission may permit production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas where the commission, after notice and opportunity for hearing, has found that producing oil or gas or oil and gas in a commingled state will prevent waste, promote conservation, or protect correlative rights.

(c) The commission, after notice and opportunity for hearing, may permit surface commingling of production of oil or gas or oil and gas from two or more tracts of land producing from the same reservoir or from one or more tracts of land producing from different reservoirs if the commission finds that the commingling will prevent waste, promote conservation, or protect correlative rights. The commission may permit the commingling regardless of whether the tracts or commission-designated reservoirs have the same working or royalty interest ownership. The amount of production attributable to each tract or commission-designated reservoir shall be determined in a manner consistent with this title. The commission has broad discretion in administering this subsection and shall adopt and enforce rules or orders as necessary to administer this subsection.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1979, 66th Leg., p. 673, ch. 300, Sec. 1, eff. May 29, 1979; Acts 1981, 67th Leg., p. 3166, ch. 830, Sec. 2, eff. June 17, 1981; Acts 1995, 74th Leg., ch. 870, Sec. 1, eff. Sept. 1, 1995; Acts 1995, 74th Leg., ch. 871, Sec. 1, eff. Sept. 1, 1995.

Sec. 85.047. EXCLUSION FROM DEFINITION OF WASTE. The use of gas produced from an oil well within the permitted gas-oil ratio for manufacture of natural gasoline shall not be included in the definition of waste.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.048. AUTHORITY TO LIMIT PRODUCTION. (a) Under the provisions of Subsection (10), Section 85.046 of this code, the commission shall not restrict the production of oil from any new field brought into production by exploration until the total production from that field is 10,000 barrels of oil a day in the aggregate.

(b) The commission's authority to restrict production from a new field under other provisions of Section 85.046 of this code is not limited by this section.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 85.049. HEARING. (a) On verified complaint of any person interested in the subject matter that waste of oil or gas is taking place in this state or is reasonably imminent, or on its own initiative, the commission, after proper notice, may hold a hearing to determine whether or not waste is taking place or is reasonably imminent and if any rule or order should be adopted or if any other action should be taken to correct, prevent, or lessen the waste.

(b) The hearing shall be held at the time and place determined by the commission.

Acts 1977, 65th Leg., p. 2517, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.050. PROCEDURE AT HEARING. (a) At the hearing, interested parties shall be entitled to be heard and to introduce evidence and require the attendance of witnesses.

(b) The production of evidence may be required as provided by law.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.051. ADOPTION OF RULE OR ORDER. If the commission finds at the hearing that waste is taking place or is reasonably imminent, it shall adopt a rule or order in the manner provided by law as it considers reasonably required to correct, prevent, or lessen the waste.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.052. COMPLIANCE WITH RULE OR ORDER. From and after the promulgation of a rule or order of the commission, it is the duty of each person affected by the rule or order to comply with it. Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.053. DISTRIBUTION, PRORATION, AND APPORTIONMENT OF ALLOWABLE PRODUCTION. (a) If a rule or order of the commission limits or fixes in a pool or portion of a pool the production of oil, or the production of gas from wells producing gas only, the commission, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, shall distribute, prorate, or otherwise apportion or allocate the allowable production among the various producers on a reasonable basis if the commission finds that action to be necessary to:

(1) prevent waste; or

(2) adjust the correlative rights and opportunities of each owner of oil or gas in a common reservoir to produce and use or sell the oil or gas as permitted in this chapter.

(b) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may distribute, prorate, apportion, or allocate the production of such commingled separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if they were a single pool; provided, however, that:

(i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations; and

(ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2578, ch. 688, Sec. 1, eff. June 16, 1981; Acts 1995, 74th Leg., ch. 435, Sec. 1, eff. Aug. 28, 1995; Acts 2005, 79th Leg., ch. 346, Sec. 2, eff. June 17, 2005.

Sec. 85.054. ALLOWABLE PRODUCTION OF OIL. (a) To prevent unreasonable discrimination in favor of one pool as against another, and on written complaint and proof of such discrimination or if the commission on its own initiative finds such an action to be necessary, the commission may allocate or apportion the allowable production of oil on a fair and reasonable basis among the various pools in the state.

(b) In allocating or ascertaining the reasonable market demand for the entire state, the reasonable market demand of one

pool shall not be discriminated against in favor of another pool.

(c) The commission may determine the reasonable market demand of the respective pool as the basis for determining the allotments to be assigned to the respective pool so that discrimination may be prevented.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2005, 79th Leg., ch. 346, Sec. 3, eff. June 17, 2005.

Sec. 85.055. ALLOWABLE PRODUCTION OF GAS. (a) If, on written complaint by an affected party or on its own initiative and after notice and an opportunity for a hearing, the commission finds that full production from wells producing gas only from a common source of supply of gas in this state is in excess of the reasonable market demand, the commission shall inquire into the production and reasonable market demand for the gas and shall determine the allowable production from the common source of supply.

(b) The allowable production from a prorated common source of supply is that portion of the reasonable market demand that can be produced without waste.

(c) The commission shall allocate, distribute, or apportion the allowable production from the prorated common source of supply among the various producers on a reasonable basis and shall limit the production of each producer to the amount allocated or apportioned to the producer.

(d) When, as provided in Subsection (b) of Section 85.046 or Subsection (b) of Section 86.012 of this code, as amended, the commission has permitted production by commingling oil or gas or oil and gas from multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas, the commission may allocate, distribute, or apportion the production of such commingled separate multiple stratigraphic or lenticular accumulations of oil or gas or oil and gas as if they were a single common source of supply; provided, however, that:

(i) such commingling shall not cause the allocation of allowable production from a well producing from any separate accumulation or accumulations to be less than that which would result from the commission applying the provisions of Section 86.095 of this code to such accumulation or accumulations; and

(ii) the allocation of the allowable for such commingled production shall be based on not less than two factors which the Railroad Commission shall take into account as directed by Section 86.089 of this code.

Acts 1977, 65th Leg., p. 2518, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 2579, ch. 688, Sec. 2, eff. June 16, 1981; Acts 1995, 74th Leg., ch. 435, Sec. 2, eff. Aug. 28, 1995; Acts 2005, 79th Leg., ch. 346, Sec. 4, eff. June 17, 2005.

Sec. 85.056. PUBLIC INTEREST. In the administration of the provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, the commission shall take into consideration and protect the rights and interests of the purchasing and consuming public in oil and all its products, such as gasoline and lubricating oil.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.057. RESTRICTION ON UNEXPLORED TERRITORY. The provisions of this chapter that were formerly a part of Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, shall not be construed to grant the commission any authority to restrict or in any manner limit the drilling of wells to explore for oil or gas or both in territory that is not known to produce either oil or gas.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.058. COMMISSION INQUIRY AND DETERMINATION. From time to time, the commission may inquire into the production, storage, transportation, refining, reclaiming, treating, marketing, and processing of oil and gas, and the reasonable market demand for oil and gas, so that it may determine whether or not waste exists or is imminent or whether the oil and gas conservation laws of this state or the rules and orders of the commission promulgated under those laws are being violated.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 2005, 79th Leg., ch. 346, Sec. 5, eff. June 17, 2005.

Sec. 85.059. RECORDS. Each person who produces, stores,

transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either shall keep in this state accurate records of the amount of oil or gas which such person produced, stored, transported, refined, reclaimed, treated, marketed, or processed and of the source from which the person produced, obtained, or received the oil or gas or the products of either and the disposition made of them.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.060. SWORN STATEMENTS AND REPORTS. The commission may require a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to make and file with the commission sworn statements or reports as to facts within his knowledge or possession pertaining to the reasonable market demand for oil and to the production, storage, transportation, refining, reclaiming, treating, marketing, or processing of oil or gas and the products of either. The report shall include those facts enumerated in Section 85.059 of this code.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.061. INSPECTION AND GAUGING. The commission may require any well, lease, refinery, plant, tank or storage, pipeline, or gathering line that belongs to or is under the control of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either to be inspected or gauged by the agents of the commission whenever and as often as and for such periods as the commission considers necessary.

Acts 1977, 65th Leg., p. 2519, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.062. EXAMINATION OF BOOKS AND RECORDS. The commission and its agents and the attorney general and his assistants and representatives may examine the books and records of a person who produces, stores, transports, refines, reclaims, treats, markets, or processes oil or gas or the products of either as often as considered necessary for the purpose of determining the facts concerning matters covered by Sections 85.058 through 85.061 of this code.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.063. VIOLATIONS BY CORPORATIONS. (a) The failure of a corporation chartered under the laws of this state to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall constitute grounds for forfeiture of the corporation's charter rights and privileges and dissolution of its corporate existence.

(b) The failure of a foreign corporation to comply with the provisions of Sections 85.059 through 85.062 of this code and to keep the records required by Section 85.059 of this code in this state or the refusal to permit officers designated in Section 85.062 of this code to inspect and examine the records required by Section 85.059 of this code shall be grounds for enjoining and forever prohibiting such corporation from doing business in this state.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.064. ACTION AGAINST CORPORATION. (a) If he determines that the public interest requires it, the attorney general shall institute suit or other appropriate action in Travis County for forfeiture of charter rights of a domestic corporation or to enjoin a foreign corporation from doing business in this state when a corporation is deemed guilty of violating the provisions of Sections 85.059 through 85.062 of this code. The attorney general may take this action on his own motion and without leave or order of any judge or court.

(b) On judgment against a defendant for violating the provisions of Sections 85.059 through 85.062 of this code, the court may, if in its judgment the public interest requires it, forfeit the charter rights of a defendant domestic corporation or enjoin a defendant foreign corporation from doing business in this state.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER D. MARGINAL WELLS

Sec. 85.121. DEFINITIONS. (a) In this subchapter, "marginal well" means an oil well that is incapable of producing its maximum capacity of oil except by pumping, gas lift, or other means of artificial lift, and which well so equipped is capable, under normal unrestricted operating conditions, of producing such daily quantities of oil, as provided in this subchapter, that would be damaged, or result in a loss of production ultimately recoverable, or cause the premature abandonment of the well, if its maximum daily production were artificially curtailed.

(b) As used in Subsection (a), Section 85.121 and Section 85.122 of this code, "gas lift" means gas lift by the use of gas not in solution with oil produced.

Acts 1977, 65th Leg., p. 2520, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.122. WELLS CONSIDERED AS MARGINAL WELLS. Wells that are considered marginal wells include any oil well in this state that is incapable of producing its maximum daily capacity of oil except by pumping, gas lift, or other means of artificial lift and having:

(1) when producing from a depth of 2,000 feet or less, a maximum daily capacity for production of 10 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(2) when producing from a horizon deeper than 2,000 feet and less in depth than 4,000 feet, a maximum daily capacity for production of 20 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(3) when producing from a horizon deeper than 4,000 feet and less in depth than 6,000 feet, a maximum daily capacity for production of 25 barrels or less, averaged over the preceding 10 consecutive days of stabilized production;

(4) when producing from a horizon deeper than 6,000 feet and less in depth than 8,000 feet, a maximum daily capacity for production of 30 barrels or less, averaged over the preceding 10 consecutive days of stabilized production; or

(5) when producing from a horizon deeper than 8,000 feet, a maximum daily capacity for production of 35 barrels or less, averaged over the preceding 10 consecutive days of stabilized production.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 325, ch. 73, Sec. 1, eff. May 3, 1983.

Sec. 85.123. CURTAILMENT OF MARGINAL WELL PRODUCTION AS WASTE. To artificially curtail the production of a marginal well below the marginal limit as set out in Sections 85.121 through 85.122 of this code before the marginal well's ultimate plugging and abandonment is declared to be waste.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.124. RULES AND ORDERS RESTRICTING MARGINAL WELLS. No rule or order of the commission or of any other constituted legal authority shall be adopted requiring the restriction of the production of a marginal well.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.125. EFFECT OF OTHER SUBCHAPTERS. None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, Chapter 2, Acts of the 42nd Legislature, 4th Called Session, 1932, as amended, or Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, authorize or may be construed to limit, modify, or repeal the provisions of this subchapter.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER E. CERTIFICATE OF COMPLIANCE

Sec. 85.161. WELL OWNERS AND OPERATORS CERTIFICATES. The owner or operator of any well subject to the jurisdiction of the commission shall secure from the commission a certificate showing compliance with the oil or gas conservation laws of the state and conservation rules and orders of the commission.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977. Amended by Acts 2001, 77th Leg., ch. 1233, Sec. 9, eff. Sept. 1, 2001.

Sec. 85.162. PROHIBITED CONNECTION. No operator of a pipeline or other carrier shall connect with any oil or gas well until the owner or operator of the well furnishes a certificate from the commission that the owner or operator has complied with the conservation laws of this state and the rules and orders of the commission.

Acts 1977, 65th Leg., p. 2521, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.163. TEMPORARY CONNECTION. The provisions of this subchapter do not prevent a temporary connection with a well in order to take care of production and prevent waste until opportunity shall have been given the owner or operator of the well to secure the certificate.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.164. CANCELLATION OF CERTIFICATE. The commission may cancel any certificate of compliance issued under the provisions of this subchapter if it appears that the owner or operator of a well covered by the provisions of the certificate, in the operation of the well or the production of oil or gas from the well, has violated or is violating the oil and gas conservation laws of this state or rules or orders of the commission adopted under those laws. Before canceling a certificate of compliance, the commission shall give notice to the owner or operator by personal service or by registered or certified mail of the facts or conduct alleged to warrant the cancellation and shall give the owner or operator an opportunity to show compliance with all requirements of law for retention of the certificate as required by Section 2001.054, Government Code.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1991, 72nd Leg., ch. 603, Sec. 3, eff. Sept. 1, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(69), eff. Sept. 1, 1995.

Sec. 85.165. EFFECT OF CANCELLATION ON OPERATOR OF PIPELINE OR OTHER CARRIER. (a) On notice from the commission to the operator of a pipeline or other carrier connected to an oil or gas well that the certificate of compliance pertaining to that well has been cancelled, the operator of the pipeline or other carrier shall disconnect from the well.

(b) It shall be unlawful for the operator of a pipeline or other carrier to transport oil from the well until a new certificate of compliance has been issued by the commission.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.166. EFFECT OF CANCELLATION ON OWNER OR OPERATOR OF WELL. On notice from the commission that a certificate of compliance for an oil or gas well has been cancelled, it shall be unlawful for the owner or operator of the well to produce oil or gas from the well until a new certificate of compliance covering the well has been issued by the commission.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.167. FEE FOR REISSUED CERTIFICATE. (a) If a certificate of compliance for an oil lease or gas well has been canceled for violation of one or more commission rules, the commission may not issue a new certificate of compliance until the owner or operator submits to the commission a nonrefundable fee of \$300 for each severance or seal order issued for the lease or well.

(b) Fees collected under this section shall be deposited to the oil-field cleanup fund.

Added by Acts 1991, 72nd Leg., ch. 603, Sec. 4, eff. Sept. 1, 1991. Amended by Acts 2003, 78th Leg., ch. 521, Sec. 1, eff. Sept. 1, 2003.

SUBCHAPTER F. RULES AND ORDERS OF THE COMMISSION

Sec. 85.201. ADOPTION OF RULES AND ORDERS. The commission shall make and enforce rules and orders for the conservation of oil and gas and prevention of waste of oil and gas.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.202. PURPOSES OF RULES AND ORDERS. (a) The rules and orders of the commission shall include rules and orders:

(1) to prevent waste, as defined in Section 85.046 of this code, of oil and gas in drilling and producing operations and

in the storage, piping, and distribution of oil and gas;

(2) to require dry or abandoned wells to be plugged in a manner that will confine oil, gas, and water in the strata in which they are found and prevent them from escaping into other strata;

(3) for the drilling of wells and preserving a record of the drilling of wells;

(4) to require wells to be drilled and operated in a manner that will prevent injury to adjoining property;

(5) to prevent oil and gas and water from escaping from the strata in which they are found into other strata;

(6) to provide rules for shooting wells and for separating oil from gas;

(7) to require records to be kept and reports made; and

(8) to provide for issuance of permits, tenders, and other evidences of permission when the issuance of the permits, tenders, or permission is necessary or incident to the enforcement of the commission's rules or orders for the prevention of waste.

(b) The commission shall do all things necessary for the conservation of oil and gas and prevention of waste of oil and gas and may adopt other rules and orders as may be necessary for those purposes.

Acts 1977, 65th Leg., p. 2522, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.2021. DRILLING PERMIT FEE. (a) With each application or materially amended application for a permit to drill, deepen, plug back, or reenter a well, the applicant shall submit to the commission a nonrefundable fee of:

(1) \$200 if the total depth of the well is 2,000 feet or less;

(2) \$225 if the total depth of the well is greater than 2,000 feet but less than or equal to 4,000 feet;

(3) \$250 if the total depth of the well is greater than 4,000 feet but less than or equal to 9,000 feet;

(4) \$300 if the total depth of the well is greater than 9,000 feet.

(b) An applicant shall submit an additional nonrefundable fee of \$200 when a Rule 37 spacing or a Rule 38 density exception review is requested.

(c) An applicant shall submit an additional nonrefundable fee of \$150 when requesting that the commission expedite the application for a permit to drill, deepen, plug back, or reenter a well.

(d) All fees collected under this section shall be deposited in the state oil-field cleanup fund.

Added by Acts 1983, 68th Leg., p. 5260, ch. 967, Sec. 7, eff. Sept. 1, 1983. Amended by Acts 1985, 69th Leg., ch. 239, Sec. 74, eff. Sept. 1, 1985; Acts 1991, 72nd Leg., ch. 603, Sec. 5, eff. Sept. 1, 1991; Acts 1999, 76th Leg., ch. 1089, Sec. 2, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 1233, Sec. 9, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 1233, Sec. 10, eff. Sept. 1, 2004.

Sec. 85.203. CONSIDERATIONS IN ADOPTING RULES AND ORDERS TO PREVENT WASTE. The commission may consider any or all of the definitions of waste stated in Section 85.046 of this code, whenever the facts, circumstances, or conditions make them applicable, in adopting rules or orders to prevent waste of oil or gas.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.204. PROHIBITED RULES AND ORDERS. The commission is not authorized to adopt a rule or order or to make a determination or holding that any mode, manner, or process of refining oil constitutes waste.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.205. NOTICE AND HEARING. No rule or order pertaining to the conservation of oil and gas or to the prevention of waste of oil and gas may be adopted by the commission except after notice and hearing as provided by law.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.206. EMERGENCY ORDER. (a) If the commission finds an emergency to exist, that in the commission's judgment requires the adoption of an order without giving notice or holding a hearing,

the emergency order may be adopted and shall be valid as though notice had been given and a hearing held.

(b) The emergency order shall remain in force no longer than 15 days from its effective date.

(c) The emergency order shall expire, in any event, at the time an order relating to the same subject matter and adopted after proper notice and hearing becomes effective.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.207. EFFECT OF AMENDMENT, REPEAL, OR EXPIRATION OF A RULE OR ORDER. The amendment, repeal, or expiration of a rule or order of the commission adopted under the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or the provisions of Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, shall not have the effect of releasing or discharging from liability, penalty, or forfeiture any person violating the rule or order before the effective date of the amendment, repeal, or expiration. Prosecutions and suits for these violations, liabilities, penalties, and forfeitures shall be instituted and proceeded with in all respects as if the rule or order had not been amended or repealed, or had not expired.

Acts 1977, 65th Leg., p. 2523, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER G. SUITS CHALLENGING THE VALIDITY OF LAWS AND ORDERS

Sec. 85.241. SUITS BY INTERESTED PERSONS. Any interested person who is affected by the conservation laws of this state or orders of the commission relating to oil or gas and the waste of oil or gas, and who is dissatisfied with any of these laws or orders, may file suit against the commission or its members in a court of competent jurisdiction in Travis County to test the validity of the law or order.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.242. EXPEDITIOUS TRIAL. A suit brought under Section 85.241 of this code shall be advanced for trial and shall be determined as expeditiously as possible. No postponement or continuance shall be granted except for reasons considered imperative by the court.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.243. BURDEN OF PROOF. In the trial of a suit brought under Section 85.241 of this code, the burden of proof shall be on the party complaining of the law or order, and the law or order is deemed prima facie valid.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.244. CONDITIONS FOR INJUNCTIVE RELIEF. No temporary restraining order, temporary or permanent injunction, or other form of injunctive relief may be granted against the commission, its members, agents, and representatives to restrain it or them from enforcing any rule or order adopted by the commission under the oil and gas conservation laws of this state or from enforcing any of these laws unless notice is given to the commission and a hearing is held as provided in this subchapter.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.245. NOTICE TO COMMISSION. (a) At the time a petition or application is filed requesting a temporary restraining order or any form of temporary injunctive relief, the clerk of the court in which the petition or application is filed shall issue notice in writing to the commission.

(b) The notice shall include:

- (1) the docket number;
- (2) the style of the case; and
- (3) a brief statement of the nature of the suit.

(c) The notice shall be served on the commission in Travis County by delivering a copy of the citation to the commission, a member of the commission, or the secretary of the commission for the service of other citations.

(d) Five days after the citation has been served a hearing may be held on the petition or application.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.246. INTERVENTION IN SUIT. In the discretion of the court, any person who is interested in the subject matter of the suit may intervene.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.247. RULES AND ORDERS PRIMA FACIE VALID. The rule or order complained of in the suit is prima facie valid, and the use and introduction of the verified petition of the plaintiff shall not be sufficient to overcome the prima facie validity of the rule or order or to authorize the court to grant any injunctive relief against the enforcement of the rule or order.

Acts 1977, 65th Leg., p. 2524, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.248. BOND. Before an order granting injunctive relief against an oil and gas conservation law, rule, or order of the commission becomes effective, the plaintiff shall be required by the court to execute a bond with good and sufficient sureties in a reasonably sufficient amount determined by the court to indemnify any persons whom the court may find from the facts proven will suffer damage as a result of the violation of the law, rule, or order in question. The persons shall be named in the order of the judge at the time the amount of the bond is fixed by the court and entered in the record.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.249. CONDITIONS OF BOND. (a) In determining the amount of the bond, the judge shall consider all facts and circumstances surrounding the parties and the ability of the plaintiff to make the bond so that the judge can determine the amount and reasonableness of the bond under the facts and circumstances.

(b) A bond made or executed by a bonding or surety company shall be by a company authorized to do business in Texas.

(c) The bond shall be approved by the judge and shall be for the use and benefit of and may be sued on by any person named in the order who suffers damage as a result of violation of the law, rule, or order.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.250. CHANGING AMOUNT, PARTIES, AND SURETIES. On a motion and for good cause shown, and after notice to the parties, the court periodically may:

(1) increase or decrease the amount of the bond;

(2) add new beneficiaries; and

(3) require new and additional sureties that the facts may justify.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.251. SUITS ON BONDS. A suit on a bond must be instituted within six months from the date of the final determination of the validity in whole or in part of the rule or order.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.252. INADMISSIBLE EVIDENCE. A finding by the court that any party is likely to suffer damage is not admissible as evidence of damages in a suit on the bond.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.253. APPEAL. After notice and hearing on an application for injunctive relief, either party to the suit is entitled to appeal the judgment or order granting or refusing the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief or granting or overruling a motion to dissolve the temporary restraining order, temporary or permanent injunction, or other form of injunctive relief.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.254. APPEAL HAS PRECEDENCE. The appeal is returnable at once to the appellate court and the action appealed shall have precedence in the appellate court over all cases, proceedings, and causes of a different character that are pending.

Acts 1977, 65th Leg., p. 2525, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.255. EARLY DECISION BY COURT OF APPEALS. The court

of appeals shall decide the question in the appeal at as early a date as possible.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 92, eff. Sept. 1, 1981.

Sec. 85.256. APPEAL PROCEDURES. The provisions and requirements of Article 4662, Revised Civil Statutes of Texas, 1925, as amended, and Rule 385 of the Texas Rules of Civil Procedure, as amended, relating to temporary injunctions, apply to appeals from any order granting or refusing a temporary restraining order, or granting or overruling a motion to dissolve a temporary restraining order under the provisions of this subchapter. Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.257. CERTIFIED QUESTIONS AND WRITS OF ERROR. (a) If a question is certified or writ of error requested or granted to the supreme court, the supreme court shall set the cause for hearing immediately and shall decide the cause at as early a date as possible.

(b) The cause shall have precedence over all other causes, proceedings, and causes of a different character in the court. Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.258. AUTHORITY OF COURT OF APPEALS TO ISSUE WRITS. The court of appeals and its judges have the jurisdiction to issue writs of prohibition, mandamus, and injunction to prevent the enforcement of any order or judgment of a trial court or judge who grants any type of injunctive relief without notice and hearing in violation of the requirements of Sections 85.244 and 85.245 of this code.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 93, eff. Sept. 1, 1981.

Sec. 85.259. ISSUANCE OF WRITS BY COURT OF APPEALS. If it appears that the provisions of Sections 85.244 and 85.245 of this code have not been complied with, then on proper application from the commission to the court of appeals having jurisdiction, the court shall issue instant the necessary writs of prohibition, mandamus, or injunction to prohibit and restrain the trial judge from enforcing or attempting to enforce the provisions of the injunction issued by him and to prohibit and restrain the party or parties in whose favor the order is entered from acting or attempting to act under the protection of the order or from violating the law, rule, or order of the commission attacked.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1981, 67th Leg., p. 800, ch. 291, Sec. 94, eff. Sept. 1, 1981.

SUBCHAPTER H. RECEIVERSHIP

Sec. 85.291. REQUEST FOR RECEIVER. If a rule or order of the commission has been finally adjudicated to be valid in whole or part in a suit to which the commission is a party, and if after that time a party to the suit or other proceedings in which the rule or order was declared valid violates the rule, order, or judgment or shall thereafter use or permit to be used any property owned or controlled by him in violation of the rule, order, or judgment, the commission shall make application to the judge of the trial court setting out the rule, order, or judgment and stating that the party subsequent to the date of the judgment violated or is violating the rule, order, or judgment and requesting that a receiver be appointed as provided in this subchapter.

Acts 1977, 65th Leg., p. 2526, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.292. APPOINTMENT OF RECEIVER AND BOND. After an application is submitted as provided in Section 85.291 of this code, the judge of the trial court, after notice and hearing, may appoint a receiver of the property involved or used in violation of the rule, order, or judgment and shall set a proper bond for the receiver.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.293. DUTIES OF RECEIVER. As soon as the receiver is qualified, he shall take possession of the property and shall perform his duties as receiver of the property under the orders of the court, strictly observing the rule, order, or judgment.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1,

1977.

Sec. 85.294. DISSOLUTION OF RECEIVERSHIP. A party whose property is placed in receivership may move to dissolve the receivership and to discharge the receiver on the terms the court may prescribe.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER I. DAMAGES

Sec. 85.321. SUIT FOR DAMAGES. A party who owns an interest in property or production that may be damaged by another party violating the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, or another law of this state prohibiting waste or a valid rule or order of the commission may sue for and recover damages and have any other relief to which he may be entitled at law or in equity. Provided, however, that in any action brought under this section or otherwise, alleging waste to have been caused by an act or omission of a lease owner or operator, it shall be a defense that the lease owner or operator was acting as a reasonably prudent operator would act under the same or similar facts and circumstances.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1987, 70th Leg., ch. 1071, Sec. 1, eff. Aug. 31, 1987.

Sec. 85.322. PROCEEDINGS NOT TO IMPAIR SUIT FOR DAMAGES. None of the provisions of this chapter that were formerly a part of Chapter 26, Acts of the 42nd Legislature, 1st Called Session, 1931, as amended, no suit by or against the commission, and no penalties imposed on or claimed against any party violating a law, rule, or order of the commission shall impair or abridge or delay a cause of action for damages or other relief that an owner of land or a producer of oil or gas, or any other party at interest, may have or assert against any party violating any rule or order of the commission or any judgment under this chapter.

Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER J. INJUNCTIONS

Sec. 85.351. SUIT FOR INJUNCTION. (a) If it appears that a person is violating or threatening to violate the provisions of this chapter that were formerly a part of Chapter 76, General Laws, Acts of the 44th Legislature, Regular Session, 1935, as amended, or Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws, the commission, through the attorney general, shall bring suit in the name of the state to restrain the violation or threatened violation.

(b) The suit shall be brought against the person violating or threatening to violate the law, rule, or order in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of residence of any defendant. Acts 1977, 65th Leg., p. 2527, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5255, ch. 967, Sec. 2, eff. Sept. 1, 1983.

Sec. 85.352. TYPES OF COURT ORDERS. In the suit, the commission in the name of the state may obtain prohibitory and mandatory injunctions, including temporary restraining orders and temporary injunctions, that the facts may warrant.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.353. APPOINTMENT OF RECEIVER. (a) The violation by a person of any injunction granted under the provisions of this subchapter shall be sufficient grounds for appointment by the court of a receiver to take charge of the person's property and to exercise authority that in the judgment of the court is necessary to bring about compliance with the injunction. The court may appoint the receiver either on its own motion or on motion of the commission in the name of the state.

(b) No receiver may be appointed until after notice is given and a hearing is held.

(c) The authority to appoint a receiver is in addition to and cumulative of the authority to punish for contempt.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

SUBCHAPTER K. PENALTIES, IMPRISONMENT, AND CONFINEMENT

Sec. 85.381. PENALTY FOR VIOLATION OF LAWS, RULES, AND ORDERS. (a) In addition to being subject to any forfeiture provided by law and to any penalty imposed by the commission for contempt for violation of its rules or orders, any person who violates the provisions of Sections 85.045 and 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission promulgated under those laws is subject to a penalty of not more than:

(1) \$10,000 when the provision, rule, or order pertains to safety or the prevention or control of pollution; or

(2) \$1,000 when the provision, rule, or order does not pertain to safety or the prevention or control of pollution.

(b) The applicable maximum penalty may be assessed for each and every day of violation and for each and every act of violation. Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 85.382. VENUE. The penalty provided in Section 85.381 of this code shall be recovered in a court of competent jurisdiction in Travis County, in the county in which the violation occurred, or in the county of the residence of any defendant.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977. Amended by Acts 1983, 68th Leg., p. 5251, ch. 967, Sec. 1, eff. Sept. 1, 1983.

Sec. 85.383. SUIT. By direction of the commission, the suit to recover the penalty shall be instituted and conducted in the name of the state by the attorney general or by the county or district attorney in the county in which the suit is brought.

Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.384. EFFECT OF RECOVERY OR PAYMENT OF PENALTY. The recovery or payment of the penalty shall not authorize the violation of any provision of Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order of the commission adopted under those laws. Acts 1977, 65th Leg., p. 2528, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.385. PERSONS AIDING OR ABETTING VIOLATION. Any person who aids or abets any other person in violating Section 85.045 or 85.046 of this code, Title 102, Revised Civil Statutes of Texas, 1925, as amended, including provisions of this code formerly included in that title, or any rule or order adopted by the commission under those laws is subject to the same penalties as provided in Section 85.381 of this code.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.3855. ADMINISTRATIVE PENALTY. (a) The commission may impose an administrative penalty on a person who:

(1) violates Section 85.165 or 85.166 or a rule or order adopted under Section 85.165 or 85.166; or

(2) knowingly destroys, breaks, removes, or otherwise tampers with, or attempts to destroy, break, remove, or otherwise tamper with, a cap, seal, or other device placed by the commission on an oil well, gas well, oil and gas well, or other associated oil or gas gathering equipment.

(b) The amount of the penalty may not exceed \$10,000 for each violation. The amount shall be based on:

(1) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) the economic harm to property or the environment caused by the violation;

(3) the history of previous violations;

(4) efforts to correct the violation; and

(5) any other matter that justice may require.

(c) The enforcement of the penalty may be stayed during the time the order is under judicial review if the person pays the penalty to the clerk of the court or files a supersedeas bond with the court in the amount of the penalty. A person who cannot afford to pay the penalty or file the bond may stay the enforcement by filing an affidavit in the manner required by the Texas Rules of Civil Procedure for a party who cannot afford to file security for costs, subject to the right of the commission to contest the affidavit as provided by those rules.

(d) The attorney general may sue to collect the penalty.

(e) A proceeding to impose the penalty is considered to be a contested case under Chapter 2001, Government Code.

(f) A penalty imposed under this section is in addition to a forfeiture provided by law or a penalty imposed by the commission for contempt for violation of a commission rule or order.
Added by Acts 1999, 76th Leg., ch. 1252, Sec. 1, eff. Sept. 1, 1999.

Sec. 85.386. FORGING NAMES ON PERMITS AND TENDERS. A person shall be imprisoned in the penitentiary for not less than two nor more than five years if he:

(1) forges the name of an agent, officer, or employee of the commission to a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas;

(2) forges the name of any person to such a tender or permit; or

(3) knowingly uses a forged instrument to induce another to handle or transport oil or gas or any product or by-product of oil or gas.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.387. PROCURING TENDERS AND PERMITS. A person shall be imprisoned in the penitentiary for not less than two nor more than five years if he:

(1) knowingly procures or causes an agent, officer, or employee of the commission to approve or issue a permit or tender of the commission relating to oil or gas or any product or by-product of oil or gas that includes a statement or representation that is false and that materially misrepresents the true facts respecting the oil or gas or any product or by-product of either; or

(2) procures or causes an agent, officer, or employee of the commission to issue to him a permit or tender relating to oil or gas or any product or by-product of either with the intent to defraud.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.388. POSSESSING A FORGED PERMIT OR TENDER. Any person who knowingly has in his possession a forged tender or permit of the commission relating to oil or gas or any product or by-product of oil or gas for the purpose of transporting, handling, or selling oil or gas shall be guilty of a misdemeanor and on conviction shall be fined not less than \$25 nor more than \$1,000 or shall be confined in the county jail for not less than 30 days nor more than one year, or both.

Acts 1977, 65th Leg., p. 2529, ch. 871, art. I, Sec. 1, eff. Sept. 1, 1977.

Sec. 85.389. CRIMINAL PENALTY. (a) A person who is not the owner or operator of an oil well, gas well, or oil and gas well, a purchaser under contract of oil, gas, or oil and gas from a well, a gatherer with written authorization from the owner, operator, or purchaser, or an authorized representative of the commission who knowingly destroys, breaks, removes, or otherwise tampers with or attempts to destroy, break, remove, or otherwise tamper with any cap, seal, or other device placed on an oil well, gas well, oil and gas well, or associated oil or gas gathering equipment by the owner or operator for the purpose of controlling or limiting the operation of the well or associated equipment commits an offense.

(b) An offense under this section is a felony of the third degree.

Added by Acts 1983, 68th Leg., p. 5230, ch. 960, Sec. 1, eff. Sept. 1, 1983.